UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION SEVEN

| BOAR'S HEAD PROVISIONS | § | |
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| CO., INC | § | |
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| and | § | Case 07-CA-209874 |
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| UNITED FOOD & COMMERICAL | § | |
| WORKERS INTERNATIONAL | § | |
| UNION (UFCW), AFL-CIO | § | |
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BRIEF IN SUPPORT OF RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Respondent Boar's Head Provisions Co., Inc. ("Boar's Head"), by their undersigned attorneys, pursuant to Section 102.24 of the National Labor Relations Board Rules and Regulations, respectfully submits this brief in support of its motion for partial summary judgment.

I. PRELIMINARY STATEMENT

The Complaint and Notice of Hearing in this matter ("Complaint") is based on an unfair labor practice charge ("Charge") filed by the United Food & Commercial Workers International Union (the "Union").¹ The unfair labor practice at issue in this Memorandum alleges that in August 2017, Boar's Head changed its vacation and attendance policy to the benefit of employees in order to discourage union activity. As explained more fully below, there is no credible evidence whatsoever that supports any claim that the company changed its vacation and attendance policy as a quid pro quo in order to discourage union activity. Instead, the evidence shows that Boar's Head's changes to the vacation and attendance policies were long-anticipated

¹ Copies of the Charge, Complaint, and Answer are attached to this Brief as Exhibits 1-3.

company-wide changes, not limited to just the Holland facility. Additionally, the evidence will show that the vacation policy was a policy the company had been reworking for an extended period prior to August 24, 2017. The vacation and attendance policy changes were rolled out for the purpose of enhancing employee retention, productivity, and to assist in a very competitive hiring climate. Thus, it is respectfully requested that the alleged unfair labor practice in the Complaint and the Charge regarding Boar's Head's vacation and attendance policies be dismissed with prejudice.

II. FACTUAL BACKGROUND

On October 1, 2017, Boar's Head changed their vacation and attendance policies at all non-union plants. The changes to the policies were implemented at all four plants on the same day. As Corporate Director of Human Resources Scott Habermehl mentioned in his affidavit taken at the NLRB's office, the primary reason Boar's Head made changes to their vacation and attendance policies was to reduce turnover and to have the ability to attract employees in a very difficult labor market.² Boar's Head was in the process of addressing company-wide concerns with the corporate vacation policy for several years. Over the years, Boar's Head, like so many other employers, has found that one of the most important issues for employees at its facilities across the country is more vacation time. In exit interviews with employees that were leaving the company, vacation time has been a consistent issue mentioned by departing employees. The attendance policy had also been an issue and contributing factor to employee turnover for a number of years. Boar's Head viewed the policies as inextricably tied together as factors in employee turnover and retention.

² See Exhibit 4, Scott Habermehl Witness Affidavit, Pg. 5.

In 2015, Boar's Head began discussing the need for an improved vacation policy. On February 25, 2015, there is an email exchange between the maintenance manager at the Columbus plant Nathan Parsley, the H.R. Business Partner at the Columbus Plant Sherry Zarbaugh, the corporate maintenance manager Guy Yondo, and Scott Habermehl.³ The email chain discusses a highly qualified maintenance technician that was quitting his position at Boar's Head because of lack of vacation time. The maintenance technician, who was an integral member of the Columbus maintenance department, commented to his supervisor that if Boar's Head was to offer him two additional weeks of vacation, he would likely stay. Mr. Yondo opened the dialogue regarding discussing options to address vacation issues for newly-hired 100 level technicians. Mr. Habermehl provided several potential options, all of which could create problems of fairness to other employees. As a result, no action was taken regarding additional vacation time for newly-hired 100 level technicians.

Throughout 2015, Mr. Habermehl and the rest of the Human Resources Business Partners at each plant continued to push for Boar's Head to improve the vacation policy. There were many discussions regarding how the current vacation policy was affecting turnover, especially at the Columbus and Holland plants. Initially the focus was on the Columbus facility because of its significant employee turnover problem. At the time, senior management was not convinced that improving the vacation policy would have sufficient impact on turnover when they weighed it against the significant cost of making such changes. Although Mr. Habermehl continued to push for an improved vacation policy, senior management felt that increasing the annual wage increase and bonus would have more impact on turnover and other employee retention issues. Therefore, in 2016, wages and bonuses were increased over previous years in an attempt to help address the

³ See Exhibit 5, Boar's Head E-mails

employee retention issue. The increases in wages and bonuses in each year were almost 30% higher than the previous year. However, the increases did not have the effect that senior management anticipated. In fact, statistically, turnover became worse at Boar's Head. Turnover increased by over 50% at the Holland plant in 2016, and the turnover rate at the Columbus plant went from 70% to almost 80%. Mr. Habermehl and other HR Business Partners continued to attribute the increasing turnover to Boar's Head's inadequate vacation and attendance policies.

Due to the significant increases in turnover, Senior Vice President Larry Helfant became involved in the discussions on how to improve turnover and employee retention. On April 29, 2016, there is an email exchange between Mr. Habermehl and Mr. Helfant.⁵ At Mr. Helfant's request, Mr. Habermehl sent Mr. Helfant a summary of vacation days and holidays at all Boar's Head's non-union plants for his review and analysis. As of April 2016, Ms. Zarbaugh was still diligently pushing an improved vacation policy because she was having the most significant turnover problems of any of Boar's Head's plants. She was proposing giving new hires five days of vacation time, as well as potentially giving all other employees an additional week. At the time, Ms. Zarbaugh went as far as having Jeff Leonard from Corporate Finance complete a cost analysis to help convince senior management that a change to vacation time was economically feasible.⁶ Later in June 2016, there was another email exchange between Mr. Habermehl and Mr. Helfant regarding increased vacation. Mr. Helfant asked for the cost analysis for the vacation proposal as to all four non-union plants and said that he intended to take the issue to senior management. Although no final decisions were reached in 2016 regarding additional vacation days, during the remainder of 2016, members of Human Resources and Jeff Leonard continued running analyses

⁴ See Exhibit 6, Boar's Head Employee Turnover Graph.

⁵ See Exhibit 5, Boar's Head E-mails.

^{6 11}

of turnover rates and overtime costs. Mr. Leonard even reached out to the accountants at the Holland and Forrest City plants to begin getting their cost estimates for each individual plant.

In February 2017, Mr. Habermehl finally was provided the opportunity to personally make his arguments to members of senior management regarding why changes to the vacation policy were necessary. However, senior management was still concerned about the long-term costs of adding vacation time because Boar's Head would have to add vacation time to not only new hires, but likely to other employees as well. They felt that giving an even greater wage and bonus increase in March of 2017 would help address the turnover issue. Although senior management decided not to go forward with changes to the vacation policy in early 2017, Human Resources continued discussions regarding adding additional vacation days and other issues such as the attendance policy that were causing high turnover numbers. Mr. Habermehl exchanged several emails with the HR Business Partner at the Holland facility Shannon VanNoy about reasons why employees were leaving.⁷ While vacation was clearly a major cause, Ms. VanNoy emphasized that the attendance policy was a factor as well because many newly-hired employees took attendance points just to get time off, which caused many to be terminated for accumulating too many attendance points. Human Resources always looked at the attendance policy as part of the same issue, as confirmed by the e-mail exchange between Mr. Habermehl and Ms. VanNoy.

With the hope that by having more detailed job market information he might convince senior management, in May and June of 2017, Mr. Habermehl asked the H.R. Business Partners at their respective plants to send him comparative vacation information from their markets. The purpose of this information was so that Mr. Habermehl could present to senior management concrete examples of how Boar's Head was not competitive on vacation with other companies at

⁷ See Exhibit 7, Boar's Head E-mail dated February 10, 2017.

⁸ Id., See also, Exhibit 4, Scott Habermehl Witness Affidavit, Pg. 5.

the non-union locations. By mid-July of 2017, Mr. Habermehl now had a detailed analysis of what the cost would be for adding vacation time for 1st year employees at each plant. In mid-August of 2017, Mr. Habermehl sent senior management a detailed proposal that included the costs for adding five paid days for 1st year employees and additional days for other employees based on years of service. After reviewing the detailed proposal, senior management ultimately accepted Mr. Habermehl's proposal in mid-September and it was announced that the changes would be made at all non-union plants as of October 1, 2017. While there was extensive cost and economic analysis on the vacation policy, changing the attendance policy did not come with a similar cost. The company felt improving one policy without improving the other would not have the desired effect on turnover and employee retention. Therefore, because Boar's Head viewed the vacation and attendance policies as the main factors leading to high turnover, Boar's Head announced changes to the attendance policy at the same time as the changes to the vacation policy.

III. <u>LEGAL ARGUMENT</u>

a. Summary Judgment Standard

Section 102.24 of the NLRB's Rules and Regulations permits a party to move for summary judgment in advance of a hearing before the Board. Section 10(b) of the Act provides that Board hearings "shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts in the United States." Accordingly, consistent with the Federal Rule of Civil Procedure 56(a), the Board has held that it will grant a motion for summary judgment if the movant establishes there "is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Security Walls, LLC, 361 NLRB No. 29, slip op. at 1 (2014); see

⁹ See Exhibit 8, Boar's Head E-mail dated August 17, 2017.

also Fed. R. Civ. P. 56(a) ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."). For the reason set forth herein, no genuine issues of material fact exist regarding the changes to the vacation and attendance policies, and Boar's Head is therefore entitled to partial summary judgment as a matter of law on the issues presented.

b. Vacation and Attendance Policies

At no time has Boar's Head offered or granted any employee improved terms or conditions of employment to dissuade such employee from supporting the union, and there is no credible evidence whatsoever supporting this false allegation. The UFCW has attempted to characterize their organizing efforts at the Holland plant in August, 2017 as a one-off organizing campaign to which Boar's Head immediately responded by soliciting employee complaints, promptly changing the vacation and attendance policies and granting individuals pay increases or promotions. That is simply false. The UFCW has engaged in organizing at the Holland plant every year since 2014. The false impression and resulting allegation by the union that changes to the vacation and attendance policies were a direct response to union organizing is a complete fabrication. Any allegation that Boar's Head promised its employees that the company vacation or attendance policy would be changed to benefit the employees in order to discourage union activity is false and erroneous for numerous reasons.

First, the vacation policy is company-wide, not unique to the Holland facility. As discussed above, Boar's Head was in the process of addressing company-wide concerns about employee turnover for several years, with the focus on its vacation and attendance policies. Through exit interviews and employee complaints, Boar's Head found that one of the most important issues for its employees at its facilities across the country is more vacation time. In numerous exit interviews

with departing employees at all locations, the amount of vacation time offered was an issue that was raised consistently. Additional vacation time was a topic discussed at numerous Town Hall meetings. Boar's Head began working on, and eventually began implementing an improved vacation policy at all of its plants in an effort to enhance employee retention, productivity, and to assist in attracting applicants in a very competitive hiring climate. In a market where new companies are entering with better employee benefits and existing companies are enhancing their benefits to attract applicants, Boar's Head was compelled to keep its policies on par or ahead of other similarly situated companies.¹⁰

Second, and more importantly, the vacation policy changes were not limited to just the Holland facility. They were implemented company-wide at all Boar's Head facilities. This is important because it clearly shows that Boar's Head did not promise employees at the Holland facility "improved terms and conditions" to convince them they should refrain from supporting a union. The vacation policy changes were implemented at the Holland location in the same manner, at the same time, and for the same reason that they were implemented at all other Boar's Head non-unionized locations.

The Board has repeatedly found that when a company improves terms and conditions of employment company-wide, there is no violation of Section 8(a)(1). Additionally, the Board has found that employers did not violate the NLRA by granting employees improved terms and conditions of employment when it was not established that the employer's motive was related to

¹⁰ See Exhibit 7, Boar's Head E-mail dated February 10, 2017.

¹¹ See Dynacor Plastics and Textiles, 218 NLRB 1404, 1404-1405 (1975) (relying on the fact that the respondent granted an additional half-day holiday for Christmas to employees at all of its locations in finding the grant was lawful); *Nalco Chemical Co.*, 163 NLRB 58, 70-71 (1967) (finding improvements to vacation and holiday benefits did not violate Sec. 8(a)(1) in part because improvements applied corporate wide).

any protected activities. In *Wal Mart Stores Inc.*, the court found that the "employer did not violate NLRA by giving employee wage increases, where increase was given one month before union filed representation petition, and it was not established that [the] employer's motive in granting wage increase was related to any protected activities." Here, it is clear that, notwithstanding the UFCW's claim to the contrary, Boar's Head's motive in implementing company-wide updated vacation policy was not related to any union or protected activity by employees at the Holland facility. The evidence is clear that it was a policy the company had been reworking for an extended period prior to August 24, 2017. It was never intended or presented as a quid pro quo.

Further, any allegation that Boar's Head promised its employees that the company attendance policy would be changed to benefit the employees to discourage union activity is also false and misleading for numerous reasons. There was never any reference to a quid pro quo by any members of management. In 2014, Boar's Head made a change to its company-wide attendance policy that extended the days until absences fall off for good attendance from 30 days to 60 days. Boar's Head received numerous complaints from employees almost immediately after this change was made. It was a topic raised by employees at virtually every employee Town Hall meeting and cited as a cause for employee defections to other companies. The Holland plant management team had been considering how to address employee concerns almost from the time the change was made. It was seen as closely related to the inadequate vacation time that together created much of the turnover problem. To enhance employee retention, productivity, and to assist in a very competitive hiring climate, Boar's Head decided to return to the previous 30 day drop off. This change has absolutely no connection whatsoever to union activity and was never presented or referred to as a quid pro quo. Additionally, and most importantly, we are unaware

¹² Wal Mart Stores Inc., 348 NLRB 274 (September 28, 2006).

of any definitive case law that supports the notion that the mere presence of union organizing, especially over a period of years, means that an employer cannot make changes to policies and procedures. There was no RC petition on file, there was no demand for recognition, and at no time has the UFCW claimed majority representation supported by signed authorization cards.

c. Employee Turnover

Additionally, as discussed above, Boar's Head found that turnover was increasing at all of their non-unionized plants at an unacceptable rate. In fact, in 2016, turnover increased by more than 50% over the previous year to over 30% at the Holland plant. The turnover rate at the Columbus plant went from an already astounding 70% to almost 80%.¹³ The Forrest City, Arkansas facility was seeing a turnover rate that was almost the same as the Holland plant, slightly over 30%. So, at the Columbus plant in 2016, 8 out of 10 employees left Boar's Head during the course of the year. The costs associated with losing employees is significant. Boar's Head must cover an open position by paying other employees extra overtime, pay the cost of recruiting and hiring, pay the cost of training a new employee (including the cost of additional trainers), and suffer the cost impact on production due to mistakes, slowing down the process, and other issues related to new employees. Boar's Head conservatively estimates that it costs the company \$7,000 to \$8,000 per employee that Boar's Head loses. That is a substantial cost when you consider that Boar's Head was losing 8 out of 10 employees every year at the Columbus plant, and 3 out of 10 employees every year at the Holland and Forrest City plants. At an average cost of \$7,500 per employee, annual turnover at the Holland plant alone was costing the company approximately \$1,237,500 per year. When turnover at all three plants is considered, it amounts to more than

¹³ See Exhibit 6, Boar's Head Employee Turnover Graph.

\$5,500,000 per year. Such a staggering cost was something Boar's Head simply couldn't ignore. While vacation was clearly a major cause of high turnover, the attendance policy was an equal factor as well because employees took attendance points just to get time off which caused many employees to be terminated for accumulating too many attendance points. Boar's Head had discussions on how they could effectively reconcile the attendance policy to help with the turnover issue. To enhance employee retention Boar's Head decided to return to the previous 30 day drop off, and made this change effective on the same day the updated vacation policy took effect. Coincidentally, in 2017 there was a substantial reduction, over 30%, in the turnover rate at the Holland facility. While it is possible the increased wages and bonuses were a factor, the changes to the vacation and attendance policies almost certainly played a major role in the decreased turnover rate. After discussing changing the vacation policy for several years, once it was finally implemented, it proved to have a substantial and undeniable impact on Boar's Head's ability to retain employees.

d. Inconsistent Adjudication of Claims

A similar charge was filed against Boar's Head at their facility in Forrest City, Arkansas on January 9, 2018. This charge made substantially the same allegations regarding Boar's Head's vacation and attendance policy changes in 2017. However, Region 15 came to a different, but correct conclusion regarding Boar's Head's vacation and attendance policy changes. Specifically, the two allegations in the charge stated that:

In or about the last week of August 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act when, during a mandatory meeting, it promised its employees additional benefits of two extra vacation days and a change to the employee point system in order to discourage employees from supporting the union and/or becoming union members.

• In or around the last week of August 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced tis employees in the exercise of rights protected by Section 7 of the Act when it gave employees additional benefits of two extra vacation days and changed the employee point system in order to discourage employees from supporting the union and/or becoming union members.

Region 15 correctly concluded that "[D]uring the course of the investigation, it was established that the changes to the vacation policy and points system had been planned prior to the most recent organizing campaign. In addition, these changes were not made only at the employer's Forrest City, Arkansas facility; but rather, the changes in benefits were a companywide initiative. See Nalco Chemical Co., 163 NLRB 58, 70-71 (1967) (finding improvements to vacation and holiday benefits did not violate Sec. 8(a)(1) in part because improvements applied corporate wide). Inasmuch as the evidence indicated these changes were already planned prior to the current organizing campaign, it cannot be shown that they were a result of the campaign and dismissal is appropriate."14 Region 15 correctly found that Boar's Head was in the process of making changes to the vacation and attendance policies long before the current organizing campaign. In dismissing the charges, Region 15 also noted that the changes to the vacation and attendance policy were not only made at the Forrest City location, but they were also made at all non-union Boar's Head facilities. Region 15 reached the correct conclusion regarding Boar's Head's vacation and attendance policies. All of the evidence cited herein, which was also relied upon by Region 15 in making its decision, supports a similar conclusion in this case.

IV. <u>CONCLUSION</u>

For the reasons set forth above, Boar's Head respectfully requests a finding that Boar's Head did not violate Section 8(a)(1) of the Act as alleged in the Complaint when they changed

¹⁴ See Exhibit 9, Partial Dismissal: Case 15-CA-212765.

their vacation and attendance policies, and moves the Board for an order granting Boar's Head's Motion for Partial Summary Judgment.

RESPECTFULLY SUBMITTED,

sy:____

Richard D. Alaniz John E. Cruickshank Ryan C. Krone

Cruickshank & Alaniz, LLP 20333 State Hwy 249, Ste 271

Houston, Texas 77070 Phone: (281) 833-2200 Facsimile: (281) 833-2240

ATTORNEYS FOR BOAR'S HEAD PROVISIONS

AFFIDAVIT OF SERVICE

I, Ryan C. Krone, hereby certify that on November 8, 2018, I e-filed one copy of Boar's Head Provisions' Brief in Support of Motion for Partial Summary Judgement with the NLRB. I further certify that copies of the foregoing were sent by email to:

Colleen J. Carol Attorney, National Labor Relations Board, Region 07 110 Michigan Street NW, Ste 299 Grand Rapids, MI 49503 (colleen.carol@nlrb.gov)

Jonathan D. Karmel Attorney for UFCW Local No. 951 The Karmel Law Firm 221 N. LaSalle Street, Suite 1550 Chicago, Illinois 60601 (jon@karmellawfirm.com)

Sarai K. King Assistant General Counsel Legal Department United Food & Commercial Workers International Union 1775 K Street, N.W. Washington, DC 20006-1598 sking@ufcw.org

Dated this 8th day of November, 2018

Ryan C. Krone

EXHIBIT 1

Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

FOURTH AMENDED CHARGE AGAINST EMPLOYER INSTRUCTIONS:

| DO NOT WRITE I | N THIS SPACE |
|----------------|--------------|
| Case | Date Filed |
| 07-CA-209874 | |

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring. 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT a. Name of Employer Boar's Head Provisions Co., Inc. b. Tel. No. (616)394-4746 c. Cell No. d. Address (street, city, state ZIP code) e. Employer Representative 284 Roost Ave, Holland, MI 49424f. Fax No. Brad Rurka 2032 Plant Manager g. e-Mail h. Dispute Location (City and State) i. Type of Establishment (factory, nursing home, Holland, MI j. Principal Product or Service k. Number of workers at dispute location hotel) Food Processing Deli Meats 520 I. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act. 2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) See Attachment A 3. Full name of party filing charge (if labor organization, give full name, including local name and number) United Food & Commercial Workers International Union 4a. Address (street and number, city, state, and ZIP code) 1775 K Street, N.W., Washington, DC 20006-1598 4b. Tel. No. (202)466-1593 4c. Cell No. 4d. Fax No. (202)728-1803

| 5. Full name of national or international labor organization of which it is an affiliate or constituent unit organization) | | 4e. e-Mail rbowser@ufcw.org (to be filled in when charge is filed by a labor | |
|--|---|--|--|
| DECLARATION I declare that I have read the above charge and that t my knowledge and belief. | he statements are true to the best of | Tel. No. (202)466-1593 | |
| (signature of representative or person making charge) | Renee L. Bowser Assistant General Counsel | Office, if any, Cell No. | |
| (signature of representative or person making charge) | Print Name and Title | Fav No | |

Address: 1775 K Street, N.W., Washington, DC 20006-1598

Date: March 29, 2018

(202)728-1803

rbowser@ufcw.org

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment A

- In about August 2017, the Employer, by Director of Human Resources Scott Habermehl, in the employee
 cafeteria, threatened employees with loss of benefits by telling employees that negotiations would start from
 scratch or the minimum wage if they select union representation.
- In about August 2017, the Employer, by Director of Human Resources Scott Habermehl, in the employee
 cafeteria, solicited employees to revoke their union authorization cards by directing them to visit human
 resources if they wanted to revoke their union authorization cards.
- In about August 2017, the Employer, by distributing a handout entitled Boar's Head Brand, threatened
 employees with loss of benefits by telling employees that negotiations would start from scratch or from
 minimum wage if they select union representation.
- In about August 2017, the Employer, by soliciting employee complaints and grievances by asking them to use
 the suggestion box in a handout entitled Explanation of Changes to Policies, promised its employees
 increased benefits and terms and conditions of employment if they refrained from union organizing activity.
- In about August 2017, the Employer raised the wages of employee Nelson Langarita and promoted him in order to discourage employees from engaging in union activity.
- In about August 2017, the Employer changed the vacation policy and attendance policy to the benefit of employees in order to discourage union activity.
- On about August 24, 2017, the Employer, by Supervisor Lupe Rodriguez, on the work room floor, threatened
 employees with loss of benefits by telling them that they could lose their benefits and that negotiations would
 start from zero or the minimum wage if they select union representation.
- On about August 24, 2017, the Employer, by Supervisor Lupe Rodriguez, on the work room floor, interrogated its employees about their union sympathies.
- On about August 24, 2017, the Employer, by Plant Manager Brad Rurka, at about 6:30 AM in conference room B, by soliciting employee complaints and grievances, promised its employees increased benefits and terms and conditions of employment if they refrained from union organizing activity.
- On about August 24, 2017, the Employer, by Plant Manager Brad Rurka, at about 6:30 AM in conference room B, threatened employees with loss of benefits including by stating that benefits would be on hold and that negotiations would start from zero or the minimum wage if they select union representation.
- On about August 28, 2017, the Employer disciplined employee Walter Aguilar because he engaged in union activity and to discourage other employees from engaging in union activity.
- On about August 29, 2017, the Employer, by Senior Vice President of Sales and Operations Larry Helfant, in the employee cafeteria, solicited employees to revoke their union authorization cards by directing them to visit human resources if they wanted to revoke their union authorization cards.
- On about August 29, 2017, the Employer, by Senior Vice President of Sales and Operations Larry Helfant, in the employee cafeteria, by soliciting employee complaints and grievances, promised its employees increased benefits and terms and conditions of employment if they refrained from union organizing activity.
- On about August 29, 2017, the Employer, by Senior Vice President of Sales and Operations Larry Helfant, in the employee cafeteria, threatened employees with loss of benefits including by telling them that negotiations would start from zero or the minimum wage if they select union representation.
- On about August 29, 2017, the Employer, by Senior Vice President of Sales and Operations Larry Helfant, in the employee cafeteria, promised its employees they would change the vacation policy to the benefit of employees in order to discourage union activity.

- On about September 5, 2017, the Employer raised the wages of employee Apolonia Rios in order to discourage employees from engaging in union activity.
- In about October 2017, the Employer, by Director of Human Resources Scott Habermehl, at about 6:30 AM at the regularly scheduled town hall meeting, threatened employees with loss of benefits by telling employees that negotiations would start from scratch or the minimum wage if they select union representation.
- In about October 2017, the Employer, by Human Resources Representative Vicente Nunez, on the work room floor, including by soliciting employee complaints and grievances, promised its employees increased benefits and terms and conditions of employment if they refrained from union organizing activity.
- In about October 2017, the Employer, by Supervisor Lupe Rodriguez, by telling employees that he had been
 instructed to watch surveillance footage of employees distributing handbills in the parking lot and identify the
 employees in the video, created an impression among its employees that their union activities were under
 surveillance by the Employer.
- In about October 2017, the Employer, by Human Resources Director Shannon VanNoy and other unnamed security guards, denied its off-duty employees access to the parking lot in order to distribute literature by barring them from the lot and ordering them to leave the parking lot.
- In about October 2017, the Employer, by Senior Vice President of Sales and Operations Larry Helfant, in the employee parking lot, unlawfully surveilled employees engaging in union activity by driving by them while another management official recorded a video.
- In about November 2017, the Employer offered increased benefits to employees by providing tools to maintenance employees in order to discourage employees from engaging in union activity.
- During the six months preceding the filing of the charge the Employer maintained unlawful rules regarding its dress code.

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

SECOND AMENDED CHARGE AGAINST EMPLOYER INSTRUCTIONS:

| UNITED STATES OF AMERICA | DO NOT WRITE IN THIS SPACE | | |
|---|---|------------|--|
| NATIONAL LABOR RELATIONS BOARD SECOND AMENDED CHARGE AGAINST EMPLOYER | Case | Date Filed | |
| INSTRUCTIONS: | 07-CA-212031 | | |
| File an original of this charge with NLRB Regional Director in which the alleged unfi | air labor practice occurred or is occurring | | |

| a Mana of Francisco | EMPLOYER AGAINST WHOM CHARGE IS BROU | GIII | |
|---|--|---|--|
| a. Name of Employer | | b. Tel. No. | |
| Boar's Head Provisions Co., Inc. | | (616)394-4746 | |
| | | | |
| | | c. Cell No. | |
| d. Address (street, city, state ZIP code) | e. Employer Representative | [F - N | |
| 284 Roost Ave, Holland, MI 49424- | Drad Durke | f. Fax No. | |
| | | | |
| 2032 | Plant Manager | g. e-Mail | |
| | | | |
| | | h Dispute Legation (City and Ct. 1.) | |
| | | h. Dispute Location (City and State) | |
| i. Type of Establishment (factory, nursing home, | 1.04-1-10.1 1 2 1 | Holland, MI | |
| | j. Principal Product or Service | k. Number of workers at dispute location | |
| hotel) | | | |
| Food Processing | Deli Meats | 520 | |
| SO ENGINEE SAN ELES BURNING | 2 on modes | 320 | |
| I. The above-named employer has engaged in an | d is engaging in unfair labor practices within the mea | value of continuo(s) | |
| the National Labor Relations Act, and these unfair | relabor practices are practices affecting commerce w | aring or section 8(a), subsections (1) and (3) of | |
| labor practices are unfair practices affecting comp | nerce within the meaning of the Act and the Postal F | ithin the meaning of the Act, or these unfair | |
| 2 Racis of the Charge (not forth a place and annual | herce within the meaning of the Act and the Postal F | Reorganization Act. | |
| 2. Dasis of the Charge (set forth a clear and conci | se statement of the facts constituting the alleged un | fair labor practices) | |
| 0 411-1-14 | | | |
| See Attachment A | | | |
| | | | |
| | | | |
| 0 5 11 (6 (611)) (111) | | | |
| 3. Full name of party filing charge (if labor organiz | ation, give full name, including local name and numb | ner) | |
| United Food & Commercial Workers II | nternational Union | | |
| | iterriational official | | |
| 4a. Address (street and number, city, state, and Z | IP code) | dh Tal No | |
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WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment A

- In about October 2017, the Employer, by Supervisor Maria De Leon, at about 11:00 AM in the beef trim
 department, interrogated employees about their union support by asking them if they support the Union
 and stating that employees that support the Union are disloyal.
- In about October 2017, the Employer, by Supervisor Maria De Leon, at about 11:00 AM in the beef trim department, threatened employees with loss of benefits by telling them that they would lose their grace period for donning and doffing if the employees select union representation.
- In about October 2017, the Employer, by Supervisor Carlos Giron, in the employee parking lot, created the impression that union activity by employees was under surveillance by telling employees that he had seen their picture on the Union's facebook page.
- On about December 6, 2017, at about 10:30 AM in the beef trim work area, the Employer, by Supervisor Maria De Leon, unlawfully interrogated employees by asking if they support the Union.
- On about December 6, 2017, at about 10:30 AM in the beef trim work area, the Employer, by Supervisor Maria De Leon, threatened employees that they would enforce work rules more strictly and terminate employees if they elect union representation.
- On about December 6, 2017, at about 10:30 AM in the beef trim work area, the Employer, by Supervisor
 Maria De Leon, informed its employees that it would be futile for them to select the Union as their bargaining
 representative by telling employees that the Union would not be able to get them reinstated if the Employer
 terminates them.
- On about December 24, 2017, at about 10:00 AM in the human resources office, the Employer, by supervisor
 Maria De Leon, by soliciting employee complaints and grievances, promised its employees increased benefits
 and terms and conditions of employment if they refrained from engaging in union activity.

EXHIBIT 2

UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD NOTICE

Cases 07-CA-209874 and 07-CA-212031

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in detail;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Bradley Runka, Plant Manager Boar's Head Provisions Co., Inc. 284 Roost Ave Holland, MI 49424-2032

John E. Cruickshank, Esq. Cruickshank and Alaniz, LLP 20333 State Hwy 249, Ste. 272 Houston, TX 77070

Ryan C. Krone, Esq. Cruickshank and Alaniz, LLP 20333 State Hwy 249, Ste. 272 Houston, TX 77070 Renee Bowser, Attorney at Law United Food and Commercial Workers International Union, AFL-CIO, CLC Legal Department 1775 K Street NW Washington, DC 20006-1598

Iris Packman , Assistant General Counsel United Food & Commercial Workers International Union 1775 K Street, N.W. Washington, DC 20006-1598 in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- Transcripts: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- Oral Argument: You are entitled, on request, to a reasonable period of time at the close of the hearing for
 oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for
 oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the
 understanding of the contentions of the parties and the factual issues involved.
- <u>Date for Filing Post-Hearing Brief</u>: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- Extension of Time for Filing Brief with the ALJ: If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- ALJ's Decision: In due course, the ALJ will prepare and file with the Board a decision in this matter.
 Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- Exceptions to the ALJ's Decision: The procedure to be followed with respect to appealing all or any part
 of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument
 before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in
 Section 102.46 and following sections. A summary of the more pertinent of these provisions will be
 provided to the parties with the order transferring the matter to the Board.

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION SEVEN

BOAR'S HEAD PROVISIONS CO., INC.

Respondent

and

Case 07-CA-209874 07-CA-212031

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW), AFL-CIO

Charging Party

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 07-CA-209874 and Case 07-CA-212031, which are based on charges filed by the Charging Party, against Respondent are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. The charges in the above cases were filed by the Charging Party, as set forth in the following table, and served upon Respondent on the dates indicated by U.S. mail:

| | Case Number | Amendment | Date Filed | Date Served |
|------|--------------|----------------|-------------------|--|
| (a). | 07-CA-209874 | | November 9, 2017 | |
| (b). | 07-CA-212031 | | December 21, 2017 | November 15, 2017 December 22, 2017 |
| (c). | 07-CA-209874 | First Amended | January 18, 2018 | January 19, 2018 |
| (d). | 07-CA-212031 | First Amended | February 13, 2018 | February 14, 2018 |
| (e). | 07-CA-209874 | Second Amended | February 13, 2018 | February 14, 2018 |
| (f). | 07-CA-209874 | Third Amended | February 28, 2018 | March 1, 2018 |
| (g). | 07-CA-209874 | Fourth Amended | March 30, 2018 | March 30, 2018 |
| (h). | 07-CA-212031 | Second Amended | March 30, 2018 | March 30, 2018 |

2. (a). At all material times, Respondent has been a corporation with an office and place of business in Holland, Michigan (Holland facility) and has been engaged in the manufacture, and the nonretail sale and distribution of delicatessen products.

- (b). During the calendar year ending December 31, 2017, Respondent in conducting its operations described above in paragraph 2(a), purchased and received at its Holland, Michigan facility goods valued in excess of \$50,000 directly from points outside the State of Michigan.
- (c). At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
- 3. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.
- 4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Scott Habermehl - Director of Human Resources

Larry Helfant - Senior Vice President of Sales and Operations

Bradley Rurka - Plant Manager

Shannon VanNoy - Human Resources Business Partner

Guadalupe Rodriguez - Production Supervisor
Maria Mendoza - Production Supervisor
Carlos Giron - Production Supervisor

Vicente Nunez - Senior Human Resources Coordinator
Leah Cochran - Senior Human Resources Coordinator

- 5. Respondent, by Scott Habermehl, in the employee cafeteria at Respondent's Holland facility:
- (a). About August 21, 2017, threatened its employees with loss of benefits by telling them that negotiations would start from scratch if they select the Charging Party as their bargaining representative.
- (b). About August 22, 2017, solicited its employees to revoke their union authorization cards.
- 6. About August 24, 2017, Respondent, by Guadalupe Rodriguez, on the work room floor at Respondent's Holland facility:
- (a). Threatened its employees with loss of benefits by telling them negotiations would start from scratch if they select the Charging Party as their bargaining representative.
- (b). Interrogated its employees about their union membership, activities, and sympathies.

- 7. About August 24, 2017, Respondent, by Bradley Rurka, in conference room B at Respondent's Holland facility:
- (a). By soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they do not select the Charging Party as their bargaining representative.
- (b). Threatened its employees with loss of benefits by telling them that benefits would be on hold and that negotiations would start from scratch if the employees select the Charging Party as their bargaining representative.
- 8. About August 29, 2017, Respondent, by Larry Helfant, in the employee cafeteria at Respondent's Holland facility:
 - (a). Solicited its employees to revoke their authorization cards.
- (b). By soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they do not select the Charging Party as their bargaining representative.
- (c). Threatened its employees with loss of benefits by telling them negotiations would start from scratch if they select the Charging Party as their bargaining representative.
- (d). Promised its employees it would change its vacation policy to the benefit of employees in order to discourage union activities.
- 9. About August 2017, Respondent, by asking employees to use the suggestion box in a handout entitled "Explanations of Changes to Policies," thereby soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they do not select the Charging Party as their bargaining representative.
- 10. About September 1, 2017, Respondent, by distributing a handout entitled "Boar's Head Brand," threatened its employees with loss of benefits by telling them that negotiations would start from scratch if they select the Charging Party as their bargaining representative.
- 11. About October 3, 2017, Respondent, by Scott Habermehl, at the regularly scheduled town hall meeting at Respondent's Holland facility, threatened its employees with loss of benefits by telling employees that negotiations would start from scratch or the minimum wage if they select the Charging Party as their bargaining representative.
- 12. Respondent, by Shannon VanNoy and security guards unknown to the General Counsel but particularly within the knowledge of Respondent, at Respondent's Holland facility:
- (a). About October 11, 2017, denied its off-duty employees access to parking lots, gates and other outside nonworking areas.

- (b). About October 18, 2017, denied its off-duty employees access to parking lots, gates and other outside nonworking areas.
- (c). About October 25, 2017, denied its off-duty employees access to parking lots, gates and other outside nonworking areas.
- (d). About November 16, 2017, denied its off-duty employees access to parking lots, gates and other outside nonworking areas.
- 13. About October 25, 2017, Respondent, by Larry Helfant, in the employee parking lot at Respondent's Holland facility, by driving a vehicle while another management official recorded video and/or took pictures, engaged in surveillance of employees engaged in union activities and concerted activities.
- 14. About October 2017, Respondent, by Vicente Nunez, on the work room floor at Respondent's Holland facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they refrained from union organizing activity.
- 15. About October 2017, Respondent, by Guadalupe Rodriguez, at Respondent's Holland facility, by telling employees that he had been instructed to watch surveillance footage of employees distributing handbills in the parking lot and identify the employees in the video, created an impression among its employees that their union and concerted activities were under surveillance by Respondent.
- 16. About October 2017, Respondent, by Maria Mendoza, in the beef trim department at Respondent's Holland facility:
- (a). Interrogated employees about their union membership, activities, and
- (b). Threatened employees with loss of benefits by telling them that they would lose their grace period for donning and doffing if the employees select the Charging Party as their bargaining representative.
 - (c). Stated that employees are disloyal if they support the Charging Party.
- 17. About October 2017, Respondent, by Carlos Giron, in the employee parking lot at Respondent's Holland facility, by telling employees that he had seen their picture on the Charging Party's Facebook page, created the impression among its employees that their union organizing activity was under surveillance.
- 18. About December 6, 2017, Respondent, by Maria Mendoza, in the beef trim work area at Respondent's Holland facility:

- (a). Interrogated employees about their union membership, activities and
- (b). Threatened employees that they would enforce work rules more strictly and terminate employees if they select the Charging Party as their bargaining representative.
- (c). By telling employees that the Charging Party would not be able to get them reinstated if Respondent terminates them informed its employees that it would be futile for them to select the Charging Party as their bargaining representative.
- 19. About December 24, 2017, Respondent, by Maria Mendoza, in the human resources office at Respondent's Holland facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they do not select the Charging Party as their bargaining representative.
 - 20. Since about May 15, 2017, Respondent has maintained the following rule: The following examples of misconduct are very serious and will result in progressive discipline... wearing unauthorized badges, pins, or other items on helmet or exterior garments.
 - About August 25, 2017, Respondent suspended its employee Walter Aguilar.
- 22. About August 28, 2017, Respondent increased the benefits of its employee Nelson Langarita by promoting him and raising his wages.
- 23. About August 31, 2017, Respondent issued a disciplinary notice to its employee Walter Aguilar.
- 24. In about August 2017, Respondent increased the benefits of its employees by improving the attendance and vacation policies.
- 25. About October 2, 2017, Respondent increased the benefits of its employee Apalonia Rios by raising her wages and paying retroactive backpay.
- 26. In about October 2017, Respondent increased the benefits of its employees by providing hand tools to its maintenance employees.
- 27. Respondent engaged in the conduct described above in paragraphs 21 through 26 because the named employees of Respondent assisted the Charging Party and engaged in concerted activities, and to discourage employees from engaging in these activities.
- 28. By the conduct described above in paragraphs 5 through 20, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

- 29. By the conduct described above in paragraphs 21 through 27, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.
- 30. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, it is prayed that Respondent be ordered to:

1. Cease and desist from:

- (a). engaging in the conduct described in paragraphs 5 through 20, or in any like or related manner interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.
- (b). engaging in the conduct described in paragraphs 21 through 27, or in any like or related manner discriminating in regard to the hire or tenure or terms or conditions of employment of its employees so as to discourage their support for, membership in, assistance to, or activities on behalf of the Charging Party, or any other labor organization.

2. Take the following affirmative actions:

- (a). Rescind and expunge from its files and records any reference to the suspension and disciplinary notice issued to Walter Aguilar and advise him, in writing, that this has been done and that the suspension and disciplinary notice will not be used against him in the future in any way.
 - (b). Rescind, in writing, and remove the rules described in paragraph 20.
- (c). Schedule a meeting or series of meetings meant to reach the widest possible audience at which Larry Helfant and/or Scott Habermehl will read the notice to employees in English, Spanish, Vietnamese, Laotian, and any other language spoken by employees at Respondent's facility. Alternatively, require that Respondent promptly have a Board agent read the notice to employees during work-time in the presence of Respondent's supervisors and agents identified above in paragraph 4.
- (d). Post appropriate notices in English, Spanish, Vietnamese, Laotian and any other languages spoken by employees at Respondent's facility.

The General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices herein alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be received by this office on or before May 11, 2018, or postmarked on or before May 10, 2018. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a consolidated complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on August 20, 2018, 11:00 a.m. at Gerald R. Ford Federal Building, 110 Michigan Street, N.W., Room 299, Grand Rapids, Michigan, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the

EXHIBIT 3

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION SEVEN

| BOAR'S HEAD PROVISIONS | 8 | |
|--------------------------|---|-------------------|
| CO., INC | 8 | |
| | § | |
| | 8 | |
| and | 8 | Case 07-CA-209874 |
| | § | 07-CA-212031 |
| UNITED FOOD & COMMERICAL | § | |
| WORKERS INTERNATIONAL | § | |
| UNION (UFCW), AFL-CIO | 8 | |
| | § | |
| | 8 | |

ANSWER

Respondent Boar's Head Provisions Co., Inc. ("Boar's Head"), by their undersigned attorneys, for their answer to the Complaint and Notice of Hearing ("Complaint") filed by the Acting General Counsel of the National Labor Relations Board ("NLRB"), states as follows:

GENERAL DENIAL

Except as otherwise expressly stated herein, Boar's Head denies each and every allegation contained in the Complaint, including, without limitation, any allegations contained in the preamble, headings, or subheadings of the Complaint, and Boar's Head specifically denies that it violated the National Labor Relations Act ("NLRA") in any of the manners alleged in the Complaint. Pursuant to Section 120.2 of the Board's rules, averments in the Complaint to which no responsive pleading is required shall be deemed as denied. Boar's Head expressly reserves the right to seek to amend and/or supplement its Answer as may be necessary.

DEFENSES

- 1. The Complaint and each purported claim for relief stated therein fail to allege facts sufficient to state a claim upon which relief may be granted.
- 2. Boar's Head has not violated Section 8(a)(1) of the NLRA as it has not interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.
- 3. Boar's Head has not violated Section 8(a)(3) of the NLRA as it has not discriminated in the hire, wages, tenure, or terms or conditions of employment of any employee at Boar's Head.
- 4. The remedy requested in Paragraph 2(a) of the "Prayer" represents a radical and not reasonably anticipated departure from current Board and court precedent.
- 5. The remedies requested in the Complaint are impermissibly punitive.
- 6. The remedy requested in Paragraph 2(b) of the "Prayer" is improper because Boar's Head has not violated section 8(a)(3) of the NLRA.
- Some or all of the claims asserted in the Complaint are barred by the six-month statute of limitations set forth in Section 10(b) of the NLRA.

RESPONSE TO SPECIFIC ALLEGATIONS OF THE COMPLAINT

AND NOW, incorporating by reference the foregoing, Boar's Head states as follows in response to the specific allegations of the Complaint:

- Boar's Head lacks information and knowledge sufficient to form a belief as to the allegations in Paragraph 1, except to admit that, it received by regular mail a charge or amendment on or around the dates listed under "dates served."
- 2. As to the lettered subparagraphs:
 - a. Boar's Head admits the allegations of Paragraph 2 (a).

- b. Boar's Head admits the allegations of Paragraph 2 (b).
- c. Boar's Head admits the allegations of Paragraph 2(c).
- 3. Boar's Head admits the allegations of Paragraph 3.
- 4. The first sentence of Paragraph 4 states presumed legal conclusions for which no answer is required. As to the remaining allegations in Paragraph 4, Boar's Head admits that the identified individuals are or were either agents or supervisors, and that they held the following positions in August 2017:
 - Scott Habermehl: Director of Human Resources
 - Larry Helfant: Senior Vice President of Sales and Operations
 - Bradley Rurka: Plant Manager, Boar's Head Holland
 - Shannon VanNoy: Human Resources Business Partner, Boar's Head Holland
 - Guadalupe Rodriguez: Production Supervisor
 - Maria Mendoza: Production Supervisor
 - · Carlos Giron: Asst. Supervisor
 - Vicente Nunez: Senior Specialist, Human Resources
 - Leah Cochran: (formerly) Senior Human Resources Coordinator
- 5. As to the lettered subparagraphs:
 - a. Boar's Head denies the allegations of Paragraph 5(a).
 - b. Boar's Head denies the allegations of Paragraph 5(b).
- 6. As to the lettered subparagraphs:
 - a. Boar's Head denies the allegations of Paragraph 6 (a).
 - b. Boar's Head denies the allegations of Paragraph 6 (b).
- 7. As to the lettered subparagraphs:

- a. Boar's Head denies the allegations of Paragraph 7(a).
- b. Boar's Head denies the allegations of Paragraph 7(b).
- 8. As to the lettered subparagraphs:
 - a. Boar's Head denies the allegations of Paragraph 8(a).
 - b. Boar's Head denies the allegations of Paragraph 8(b).
 - c. Boar's Head denies the allegations of Paragraph 8(c).
 - d. Boar's Head denies the allegations of Paragraph 8(d).
- 9. Boar's Head denies the allegations of Paragraph 9, except to admit that Boar's Head maintains a suggestion box that has been in use for over five years and that Boar's Head distributed a handout entitled "Explanation of Changes to Policies."
- 10. Boar's Head denies the allegations of Paragraph 10, except to admit that Boar's Head distributed a handout entitled "Boar's Head Brand."
- 11. Boar's Head denies the allegations of Paragraph 11.
- 12. As to the lettered subparagraphs:
 - a. Boar's Head denies the allegations of Paragraph 12 (a).
 - b. Boar's Head denies the allegations of Paragraph 12 (b).
 - c. Boar's Head denies the allegations of Paragraph 12 (c).
 - d. Boar's Head denies the allegations of Paragraph 12 (d).
- 13. Boar's Head denies the allegations of Paragraph 13.
- 14. Boar's Head denies the allegations of Paragraph 14.
- 15. Boar's Head denies the allegations of Paragraph 15.
- 16. As to the lettered subparagraphs:
 - a. Boar's Head denies the allegations of Paragraph 16 (a).

- b. Boar's Head denies the allegations of Paragraph 16 (b).
- c. Boar's Head denies the allegations of Paragraph 16 (c).
- 17. Boar's Head denies the allegations of Paragraph 17.
- 18. As to the lettered paragraphs:
 - a. Boar's Head denies the allegations of Paragraph 18 (a).
 - b. Boar's Head denies the allegations of Paragraph 18 (b).
 - c. Boar's Head denies the allegations of Paragraph 18 (c).
- 19. Boar's Head denies the allegations of Paragraph 19. The inclusion of this particular allegation arguably demonstrates bad faith by the Region in the investigation of the underlying charge and should be stricken.
- 20. Boar's Head denies that the allegations of Paragraph 20 constitute a violation of the National Labor Relations Act, as currently interpreted.
- 21. Boar's Head denies the allegations of Paragraph 21, except to admit that on about August 25, 2017, Walter Aguilar was sent home during the investigation of a workplace incident, however his compensation was unaffected.
- 22. Boar's Head denies the allegations of Paragraph 22, except to admit that Mr. Langarita's position was reclassified to a recently created position of Packaging Specialist, which was accompanied by a pay increase.
- 23. Admit that Walter Aguilar was issued a disciplinary notice.
- 24. Boar's Head denies that any allegations in Paragraph 24 constitute a violation of any provision of the National Labor Relations Act.
- 25. Boar's Head denies that any allegations in Paragraph 25 constitute a violation of any provision of the National Labor Relations Act.

- 26. Boar's Head denies that any allegations in Paragraph 26 constitute a violation of any provision of the National Labor Relations Act.
- 27. Boar's Head denies the allegations of Paragraph 27.
- 28. Boar's Head denies the allegations of Paragraph 28.
- 29. Boar's Head denies the allegations of Paragraph 29.
- 30. Boar's Head denies the allegations of Paragraph 30.

Boar's Head reserves the right to raise any additional defenses not asserted herein of which they may become aware through investigation, as may be appropriate at a later time.

RESPECTFULLY SUBMITTED,

By:

John E. Cruickshank

Ryan C. Krone

Cruickshank & Alaniz, LLP 20333 State Hwy 249, Ste 271

Houston, Texas 77070

Phone: (281) 833-2200

Facsimile: (281) 833-2240

ATTORNEYS FOR BOAR'S HEAD PROVISIONS

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION SEVEN

| BOAR'S HEAD PROVISIONS CO., INC | 8 8 | |
|--|-------------------------------|-----------------------------------|
| and UNITED FOOD & COMMERICAL WORKERS INTERNATIONAL UNION (UFCW), AFL-CIO | n con con con con con con con | Case 07-CA-209874 07-CA-212031 |

CERTIFICATE OF SERVICE

I certify that a copy of Respondent's Answer was electronically served on May 10, 2018 and sent by overnight mail to the following parties:

Terry Morgan Regional Director National Labor Relations Board, Region 07 Patrick V. McNamara Federal Building 477 Michigan Avenue, Room 300 Detroit, MI 48226

Renee Bowser Attorney at Law United Food and Commercial Workers International Union, AFL-CIO, CLC Legal Department 1775 K Street NW Washington, DC 20006-1598

Iris Packman
Assistant General Counsel
United Food & Commercial Workers
International Union
1775 K Street, N.W.
Washington, DC 20006-1598

Dated this 10th day of May, 2018

John E. Cruickshank

EXHIBIT 4

Confidential Witness Affidavit

I, Scott Habermehl, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

My office is located at 1819 Main Street Suite 800 Sarasota, Florida 34236

My cell phone number (including area code) is 941.504.1169

My email address is scott.habermehl@boarshead.com

I am employed by Boar's Head Provisions Co., Inc. Delicatesson Services Co. L.h.C

1 0H

- I am the Director of Human Resources for Bear's Head Provisions Co., Inc. I have been in that
- 2 position for about the last thirteen years. In that position I oversee all of our HR functions at our
- 3 manufacturing and distribution locations. I also oversee labor and employee relations at each
- 4 location. There are seven manufacturing and distribution locations. The employees at two of our
- 5 plants in Virginia are represented by UFWC Local 400. The employees at our plant in New York
- 6 are represented by UFCW Local 342. I am a trustee for UFCW Local 400's Health and Welfare
- 7 Fund and I was formerly a trustee for UFCW Local 400's Pension plan. I have been a trustee in
- 8 the Health and Welfare fund for approximately the last twelve years and was a trustee in the
- 9 pension plan from the time that I became HR Director until about a year-and-a-half ago.

10

Privacy Act Statement

The NLRB is asking you for the information on this form on the authority of the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the NLRB in processing representation and/or unfair labor practice cases and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). Additional information about these uses is available at the NLRB website, www.nlrb.gov. Providing this information to the NLRB is voluntary. However, if you do not provide the information, the NLRB may refuse to continue processing an unfair labor practice or representation case, or may issue you a subpoena and seek enforcement of the subpoena in federal court.

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Initials _____

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I learned in early August 2017 from Human Resources Representative Leah Cochran that there 1 2 were employees talking about a Union in the maintenance area. Apparently, one of the maintenance employees had come to Human Resources and said that the employees were 3. discussing a union. The exployee had told the Human Resources representative, Valerie 4 5 Dannefel, that many of the maintenance employees were upset because they had learned that Indiana employees at our other facilities are provided hand tools to use while working. I told Cochran 6 that I would look into it. I found that the other facilities were providing tools to maintenance 7 employees so I instructed the Human Resources representatives to offer hand tools to employees e as we do at other facilities.

About two weeks after I spoke with Cochran I came to the Holland facility to speak with employees about the Union. I was present at the facility on August 21 and August 22, 2017, in order to conduct meetings with the employees. I conducted approximately six meetings in order to speak to all of the employees during their shift. Each meeting lasted about an hour although I believe it would have taken about a half-hour if the meetings were not translated. Each of the meetings were more or less identical to each other. During the meetings, I referred to a powerpoint that has been provided to the Board Agent. I did not read off a script. Instead, I used the powerpoint as a guide. During the meetings, I gave our position that the employees can talk to management and do not necessarily need a third-party to represent them. I did say that it is ultimately their decision to organize a union or not. I said this multiple times throughout the presentation. I even told employees that they should show up and vote if they want a union but that employees should make sure to vote. I told employees that union organizers will explain their viewpoints if they come to your door so we want to make sure to explain ours. I also

explained how the process works from the time that cards are signed through collective bargaining if the Union were to win. I told employees that if the Union wins we would start 2 bargaining with the Union and that since we do not have a collective-bargaining agreement 3 everything would be negotiable. I said that the Union may start off by proposing a starting wage 4 5 of \$50 per hour and we may counter with minimum wage. I said that when it was all said and done that we would find a place in the middle and that employees may have less or more than 6 they have now. I did not say that negotiations would start at zero or from scratch. I also 7 compared some of the wages and benefits in Holland with the wages and benefits at our 8 unionized facilities. I said that generally, across-the-board, the non-union employees have better 9 medical benefits. I also compared a few of the wages at the other facilities side-by-side to show 10 that the non-union wages were higher. I did not give handouts to any employees at these 11 12 meetings. 13 At one of the meetings on the first day, two employees came up to the front where I was 14 15 speaking after the meeting and said to the translator that they had been tricked. I do not recall 16 who was serving as the Employer's translator that day. I do not recall who the two employees were. I only recall that they were female. The employees said that they had signed one of the 17 authorization cards that they had seen on the slide but they felt tricked. According to the 18 employees, a union organizer came to their house and they said they weren't interested. Then, Schen days 19 two other union organizers came to their house and said that they were the supervisors of the 20 similar to what pt previous organizer and that they wanted the employees to sign to confirm that the other 21 organizers had come. However, what they signed turned out to be the authorization card had 22 put on the slide. The employees asked if there was anything they could do to get their cards back. 23

if and how you could &

I said to come to Human Resources and that they would help you figure out to revoke the 1

authorization card. I said that I think there is a way to do it but that Human Resources could 2

figure that out. That was the end of that conversation. 3

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Employees were given the opportunity to ask questions at each of the meetings. I recall that 5

employees asked if there would always be an election and whether employees could change their 6

mind if they signed a card. I interpreted that to mean that the employee wanted to know if they

had to vote yes if they signed a card. I explained that there is a petition for an election but that

does not always mean that there is an election. I said the company could recognize the Union

based on the cards that they turned in. I said that if there is an election it would be by secret 10

ballot and the employees could vote yes or no. I also recall that somebody asked why I am here 11

now. I said that I do this every year. I do not visit the facility every twelve months exactly but I 12

do visit each facility approximately once a year and give a similar presentation to the one I gave due to the turnover + approx ask new people, to

this time. I do not recall any employees saying that they wanted any specific improvements to be 14

made. I did not say that we were looking into changing the attendance or vacation policies or that

we were otherwise looking into changing the terms and conditions of employment for the

employees in any way.

18

19

I have not given any other presentations to employees regarding the union organizing drive or to

20 tell employees our viewpoint on unions.

21

I attended a town hall meeting on November 15, 2017. A meeting is held quarterly in which a 22

handful of employees are invited to give feedback to management employees about how things 23

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could be done better or about what we are doing right. There was no discussion about the Union 1 at the town hall meeting that I attended on November 15, 2017. I did not even speak at this 2 meeting. I just listened and took notes. I probably said hi or exchanged other pleasantries but did 3 not say anything else. I have not attended any other town hall meetings at the Holland facility. 4 5 Changes were made to the vacation and attendance policy beginning on about October 1, 2017. 6 These changes were made at all of our non-union facilities. The changes were made due to 7 8 turnover and retention issues. For years, we had focused on giving increased wages and bonuses in order to keep employees. However, we consistently found on exit interview forms and during 9 interviews that we were not competitive with paid time off. Also, the labor market has tightened 10 significantly during the last few years. Therefore, we also did market surveys of all of the 11 locations where we operate and found that we offered less paid time off than other comparable 12 employers in that area. We decided to offer more paid time off to employees based on all that. 13 We began giving employees vacation after six months of service. It had previously taken a year 14 to earn paid time off. We also added two days of paid time off after a year and added more time 15 off after three years. I am not totally sure that this is the exact policy because it had been debated 16 17 for so long, but, the Employer is providing a copy of the revised vacation and attendance policy that is accurate. Regarding attendance, we had made a change in 2015 or 2016 that added a 18 progressive discipline for attendance and called for attendance points to fall off after sixty days 19 rather than thirty. After that, we saw a spike in employees getting terminated for attendance 20 reverted violations. We also heard a lot of complaints from employees that never subsided until we-21 changed the attendance policy in 2017. Typically, employees do not constantly complain as they 22 Signle ISSUC 23 did in this case.

| | 7 | |
|-----|----|--|
| | 1 | GD Levery Year. |
| | 2 | We also made some changes to our health and short-term benefits this year. We began a wellness |
| | 3 | program about four or five years to encourage employees to engage in more healthy habits. I do |
| | 4 | not recall if we ever gave incentives (beyond the wellness discount) to employees to participate |
| | 5 | in the wellness program prior to 2017. In 2017, \$250 gift cards were offered to employees in |
| | 6 | order to encourage them to do what is necessary to complete the wellness program and earn their |
| | 7 | wellness discount for 2018. This was done at all of our facilities except in Virginia where |
| | 8 | employees are on the Union Health and Welfare Plan. It was even done at our facility in New |
| | 9 | York where employees are on the same Health and Welfare Plan as the employees that are not |
| | 10 | represented by a union. There were some changes made to the health benefits this year based on |
| 1 | 11 | utilization analysis that we do each year. Rates for the next year are typically set during the |
| | 12 | Summer of the previous year based on several consultations with Blue Cross Blue Shield and our |
| | 13 | plan brokers. The changes that we make each year apply to all of our facilities where there is no |
| ¥ii | 14 | union and in New York where employees are not on the Union's health and welfare plan. I do |
| | 15 | not believe there were any changes to our short-term disability plan this year. If there were, those |
| | 16 | decisions would have been made at the same time that we were changing our health insurance |
| | 17 | plans. The changes to the short-term disability benefits also would apply to all facilities other |
| | 18 | than the ones in Virginia. + Jessibly New York The hourly employees at the |
| | 19 | |

It is my understanding that t-shirts were distributed to employees sometime around November or
December 2017. I was not there when it happened at that time. Typically, Human Resources
distributes the tee shirts to employees using a check off sheet. The list of employees has the size
needed for each employee. Shirts are handed out and the person who hands them out checks the

Initials:

| 1 | employee names off. Shirts are typically distributed every time we have some sort of a |
|-----|--|
| 2 | celebration at any of the facilities. For example, they are usually given at the various company |
| 3 | picnics or other employee appreciation events. The t-shirts typically just feature the company |
| 4 | logo and may something meant to be inspiration such as "we are family," or words to that effect. |
| . 5 | "I believe," |
| 6 | The Employer has maintained a no-solicitation policy that has not changed since at least January |
| 7 | 2004. The no-solicitation policy is published in the employee handbook that is distributed to all employees Some facilities. The hearth and the employees Some facilities. |
| 8 | employees. Some facilities also have the no-solicitation policy posted around the facility. I do |
| 9 | not know if it is posted anywhere at the Holland facility. |
| 10 | |
| 11 | All of our facilities have suggestion boxes. Each facility has been required to have one since we |
| 12 | began focusing on continuous improvement about seven years ago. I do not know how often |
| 13 | people look at the suggestions, or which people are designated to look at them. |
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Initials:

Board Agent

National Labor Relations Board

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 8 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. In the best of th

Date: February 21, 2018

Signature: Signature: Scott Habermehl

Signed and sworn to before me on February 21, 2018

Grand Rapids, Michigan

Andrew Hampton

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Initials:

EXHIBIT 5





From: Habermehl, Scott

Sent: Wednesday, February 25, 2015 10:36 AM

To: Yondo, Guy <Guy.Yondo@boarshead.com>; Parsley, Nathan <Nathan.Parsley@boarshead.com>; Zarbaugh, Sherry

<Sherry.Zarbaugh@boarshead.com>

Subject: RE: Josh Ruark

We have the following options: 1) do nothing, 2)move all maintenance tech's in non-union plants to 200 series, 3) change the vacation accrual for all 100 series employees, 4) offer vacation to 100 series employees based on market conditions, (i.e. individual negotiation) 5) offer increased vacation to 100 series maintenance only employees in non-

Option 3 is not realistic. Option 4 carries a lot of risk in perceived unfairness/discrimination. Options 2 and 5 could alienate the rest of the 100 series employees even more, but may be worth it. I'm open to ideas!

Thank you, Scott

From: Yondo, Guy

Sent: Wednesday, February 25, 2015 9:39 AM

To: Parsley, Nathan; Zarbaugh, Sherry; Habermehl, Scott

Subject: RE: Josh Ruark

Scott.

Is there a way to address the vacation issue for newly hired 100 level techs?

Nate - what is the job environment in the area? Do 100 level techs typically receive 2 weeks form start date?

Guy J. Yondo | Senior Facilities Manager

Boar's Head Brand

Office: 616.394.4746 ext. 6106

Cell: 941.232.1653

From: Parsley, Nathan

Sent: Wednesday, February 25, 2015 8:00 AM To: Zarbaugh, Sherry; Habermehl, Scott; Yondo, Guy

Subject: FW: Josh Ruark

Anybody seeing a pattern?

When Josh originally came to me with what he'd like to see he put down 2.50 more on the hour.

This may be salvageable; after turning down the bluff on asking for so much.

Regards,

Nate

From: Harlan, Shane

Sent: Wednesday, February 25, 2015 6:51 AM

To: Parsley, Nathan Subject: Josh Ruark

I had him complete his exit interview papers and they are on your desk.

Also I don't know if it matters or not but I do know he made the comment to me if we were to maybe even offer him the 2 weeks' vacation he asked about he would maybe stay. You figure he is due for 1 week in may anyways, not sure if it's possible. I just would hate to lose probably one of if not our best tech. He didn't really say much about money but FYI he said the new place was only offering like .50 cents more.

Shane Harlan | Maint. Tech. Boar's Head Brand Office: 614.662.5300 ext. 8133





From: Helfant, Larry

Sent: Friday, April 29, 2016 1:27 PM

To: Habermehl, Scott <Scott.Habermehl@boarshead.com>
Subject: Re: Hourly Vacation-Holiday Comparison.xlsx

Thanks Scott. Monday meeting?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Habermehl, Scott

Sent: Friday, April 29, 2016 12:55 PM

To: Helfant, Larry

Subject: Hourly Vacation-Holiday Comparison.xlsx

Larry,

Here is a side by side of vacation and paid holidays for the plants .

Thanks, Scott





From: Carzo, Frank

Sent: Thursday, May 26, 2016 7:56 AM

To: Zarbaugh, Sherry <Sherry.Zarbaugh@boarshead.com>
Cc: Habermehl, Scott <Scott.Habermehl@boarshead.com>

Subject: RE: Hourly Vacation

Sherry, waiting to hear from Larry.

From: Zarbaugh, Sherry

Sent: Wednesday, May 25, 2016 8:14 AM

To: Carzo, Frank

Subject: Hourly Vacation

Good Morning Frank:

Do you have any updates regarding the hourly vacation proposal?

Thank you@

Sherry Zarbaugh | Human Resource Manager Boar's Head Brand 614-662-5300 ext 8104





From: Leonard, Jeff

Sent: Wednesday, June 29, 2016 2:47 PM

€ .

To: Habermehl, Scott <Scott.Habermehl@boarshead.com>

Subject: RE: Vacation.xlsx

I talked to Rod Poll and Chase Wilkey (Cost accountants in MI and AR) - they are going to be able to help out at their local facilities. They understand the math I used and how it will be different in their locations based on the tenure

They both know to contact me with any concerns or questions.

Jeff Leonard | Finance **Boar's Head Brand**

Office: 614-662-5300 x8197

From: Habermehl, Scott

Sent: Wednesday, June 29, 2016 1:49 PM

To: Leonard, Jeff

Subject: FW: Vacation.xlsx

Jeff,

Can you please send me the spreadsheet with the formulas? We're doing the same calculation for the other non-union

Thank you! Scott

From: Leonard, Jeff

Sent: Tuesday, June 07, 2016 8:33 AM

To: Zarbaugh, Sherry Subject: RE: Vacation.xlsx

Sherry,

After factoring in termination trends based on tenure and the average tenure of employees today, I believe the average

| Current Breakdown | Full Year Estimate | Dave Farned | Tatal D | 220 |
|---|--------------------|------------------------|------------------------------|-------------------------------------|
| CONTRACTOR OF THE PROPERTY OF | | Days carried | Total Days | Total Hours |
| 40 | 84 | 0 | | |
| 12 | 80 | 1 | 00 | |
| 9 | | | 80 | 640 |
| - 8 | 60 | 2 | 120 | 960 |
| 50 | 88 | 3 | 264 | 2112 |
| | 48 | 48 84 12 80 8 60 | 48 84 0 12 80 1 8 60 2 | 48 84 0 12 80 1 80 8 60 2 120 |

| 241-300 days | 46 | 29 | . 1 | | |
|--------------|----|----|-----|-----|------|
| 301-365 days | 15 | | 4 | 116 | 928 |
| >1 Year | 80 | 25 | 5 | 125 | 1000 |

5640 Total Hrs \$80,821 Total Cost

Overtime today is not directly correlated to call-offs and is more associated with sales volume week to week. However, there could be some need - I've estimated that for every 8 hours of vacation time we'll need 1.5 hours of OT.

5,640 Total new hours earned will required 1,058 OT hours. OT Hours are paid at 1.5x or \$21.50/hour = \$23,054

Total Groveport Labor additional cost for year-to-go is \$103,875 (vacation 80,821 + OT 23,054) based on these estimates

Let me know if you have any questions.

Jeff Leonard | Finance Boar's Head Brand

Office: 614-662-5300 x8197

From: Zarbaugh, Sherry

Sent: Monday, June 06, 2016 9:19 AM

To: Leonard, Jeff

Subject: RE: Vacation.xlsx

I have Tiffany adding the hire dates and will get it to you shortly.

Sherry Zarbaugh | Human Resource Manager **Boar's Head Brand** 614-662-5300 ext 8104

From: Leonard, Jeff

Sent: Monday, June 06, 2016 9:02 AM

To: Zarbaugh, Sherry Subject: RE: Vacation.xlsx

Can you send me the list of people that have been terminated so far this year and their hire date (100 series only)?

Jeff Leonard | Finance **Boar's Head Brand**

Office: 614-662-5300 x8197

From: Zarbaugh, Sherry

Sent: Friday, June 03, 2016 1:15 PM

To: Leonard, Jeff

Subject: RE: Vacation.xlsx

Yes, no problem@

Thank you,

Sherry Zarbaugh | Human Resource Manager

Boar's Head Brand 614-662-5300 ext 8104

From: Leonard, Jeff

Sent: Friday, June 03, 2016 1:14 PM

To: Zarbaugh, Sherry Subject: RE: Vacation.xlsx

We've still got some issues on the floor today... I've started working on this but I'll probably be away from it for most of the day. Is Monday delivery acceptable?

Jeff Leonard | Finance Boar's Head Brand

Office: 614-662-5300 x8197

From: Zarbaugh, Sherry

Sent: Friday, June 03, 2016 11:19 AM

To: Leonard, Jeff

Subject: RE: Vacation.xlsx

Hi Jeff:

Yes, he wants to see the cost for the rest of this year if we started it on July 1st and what it would look like for next year by adding in the turnover numbers. So, how is works is they do not earn any time the first 60-days, they would earn 1 day every sixty days after their probationary period to equal 5 for the year. We can us all of your numbers regarding OT and the turnover rate, that is the best we can assume at this point[®] Scott understands that it will not be 100% correct but if he can show a close estimate he is fine.

Thanks

Sherry Zarbaugh | Human Resource Manager Boar's Head Brand 614-662-5300 ext 8104

From: Leonard, Jeff

Sent: Friday, June 03, 2016 11:12 AM

To: Zarbaugh, Sherry Subject: RE: Vacation.xlsx

So what we're looking for is the total cost for 2016 if we implement this policy beginning July 1st?

The policy is that you earn 1 day after every 60 days of employment?

We'll assume turnover will continue at 22% per 3 month period?

We'll assume that each vacation day required 2 hours of OT to cover – is that ok? I pulled that out of thin air, I'm not sure how we'd actually learn this information...

Jeff Leonard | Finance Boar's Head Brand

Office: 614-662-5300 x8197

From: Zarbaugh, Sherry

Sent: Friday, June 03, 2016 10:10 AM

To: Leonard, Jeff

Subject: FW: Vacation.xlsx

Hi Jeff:

Scott wants us to use the current headcount list with their hire dates and start the vacation time accrual as if they get it on July 1, 2016 that way we have a true number for this year. Then he wants us to use the turnover rate to show the future costs, hope this makes since I am so tired I cannot think straight I can call you and we can go over together if you want, just let me know. I really appreciate your help and gave you all the credit for this a

Thanks

Sherry Zarbaugh | Human Resource Manager Boar's Head Brand 614-662-5300 ext 8104

From: Habermehl, Scott

Sent: Thursday, June 02, 2016 5:21 PM

To: Zarbaugh, Sherry Subject: RE: Vacation.xlsx

OT should be considered in this equation. Also, did we use the current headcount with their hire dates for the initial accrual of 20 hours during the first year? For ongoing year's we should use the expected turnover rate to drive the amount of new hires.

Probably best to give me a quick call to discuss.

Thank you, Scott

From: Zarbaugh, Sherry

Sent: Thursday, June 02, 2016 3:42 PM

To: Habermehl, Scott Subject: FW: Vacation.xlsx

Importance: High

Hi Scott:

Below is the cost estimate that Jeff and I worked on today for the hourly vacation, as you can see we have two scenario's, one is just giving the new hires the 5 days of vacation within the first year and scenario two is adding a week for all the employees to make it fair. Let me know if you need any additional information.

Thank you,

Sherry Zarbaugh | Human Resource Manager Boar's Head Brand 614-662-5300 ext 8104

From: Leonard, Jeff

Sent: Thursday, June 02, 2016 2:21 PM

To: Zarbaugh, Sherry Subject: RE: Vacation.xlsx

Sherry,

Below is the table we discussed today along with some commentary. Let me know if you need additional details or if there are pieces I've not considered.

100 Series Employees (as of 6/1/16)

| 0-1 Yr | 179 | 600/ |
|---------|-----|------------|
| 1-3 Yr | 75 | 69% 29% |
| 3-10 Yr | 5 | 2% |
| 10+ Yr | 0 | 0% |

Vacation

| Current | Proposal 1 | Proposal 2 |
|-------------|-------------------------------------|--|
| 0 days | 5 days (earn as go) | 5 days (earn as go) |
| 5 + 1 days | | 10 + 1 days |
| 10 + 1 days | | 15 + 1 days |
| 15 + 1 days | | 20 + 1 days |
| | 0 days 5 + 1 days 10 + 1 days | 0 days 5 days (earn as go) 5 + 1 days 5 + 1 days 10 + 1 days 10 + 1 days |

2016 Turnover Trend = 66%

Assume all turnover comes from 0-1Yr employees

170 Employees <1yr once implemented

66% turnover

282 Employees will earn PTO

Based on turnover, assume employees will earn 2.5 days (some earn 5, some earn 0 before termination)

Proposal #1

282 Employees X \$14.33/hour (avg rate) X 20 hours PTO $(2.5 \times 8) = \$80,821$ annual cost (0.7% of annual labor budget) Notice that 1yr + vacation schedules are not impacted

Proposal #2

All employees earn 5 days of PTO additional to current schedule

430 Employees (current + 66% turnover) X \$14.33/hr X 40 hours PTO = \$246,476 annual cost (2.2% of annual labor budget).

Other considerations

Will OT be required to offset the PTO – today OT does not match call offs at 1:1, but there are some OT costs.

OT could add \$5 - \$7 per hour to the rates increasing the total costs by 33% (107K for Prop1, 328K for Prop2)

Jeff Leonard | Finance

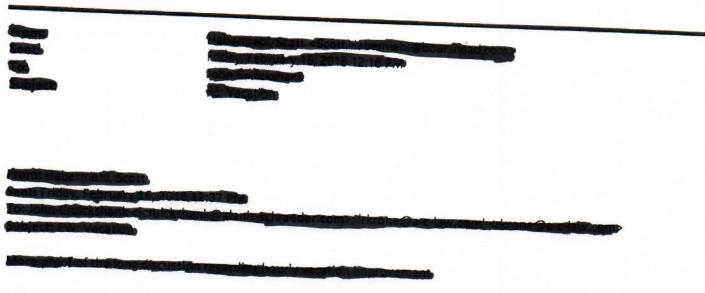
Boar's Head Brand

Office: 614-662-5300 x8197

From: Zarbaugh, Sherry

Sent: Thursday, June 02, 2016 9:28 AM

To: Leonard, Jeff Subject: Vacation.xlsx



From: Helfant, Larry

Sent: Tuesday, June 28, 2016 9:34 PM

To: Habermehl, Scott < Scott. Habermehl@boarshead.com>

Subject: RE: Vacation

Good evening Scott

Can you get the costs for all the remaining plants for PTO in first year just in case we will need to change all the facilities? Once this is done lets meet with Bob for his approval.

Thanks

Larry Helfant Boar's Head Brand Work: 941-955-0994 Mobile: 941-232-9237

From: Habermehl, Scott

Sent: Monday, June 20, 2016 10:50 PM

To: Helfant, Larry Subject: FW: Vacation

Larry,

It looks like \$81k for the current employees to give them 1st year PTO based on their seniority. Going forward, it will cost about \$100k per year for PTO and the required overtime to backfill people on PTO. The \$100k is based on 50% turnover each year of a hourly workforce of 250.

Thank you, Scott From: Leonard, Jeff

Sent: Monday, June 20, 2016 3:20 PM

To: Habermehl, Scott Subject: RE: Vacation

Hey Scott,

The work that I used on this was in the original body of the email – I populated the "Current Breakdown" column based on the current staffing by tenure and applied turnover and re-hire estimates to get our full year estimate column. I don't have a file or any backup other than this table:

| Tenure | Current Breakdown | Full Year Estimate | Davis E | | |
|--------------|-------------------|--------------------|-------------|------------|-------------|
| 0-60 days | 48 | - Local Estimate | Days Earned | Total Days | Total Hours |
| 61-120 days | - | 84 | 0 | | 10 |
| 121-180 days | 12 | 80 | 1 | 80 | 640 |
| | 8 | 60 | 2 | 120 | |
| 181-240 days | 50 | 88 | 3 | | 960 |
| 241-300 days | 46 | | 3 | 264 | 2112 |
| 301-365 days | 15 | 29 | 4 | 116 | 928 |
| >1 Year | | 25 | 5 | 125 | 1000 |
| - 1001 | 80 | | | | 1000 |

5640 Total Hrs \$80,821 Total Cost

What exactly are we trying to do here? It seems there's been a lot of back-and-forth. I want to make sure that I'm being a good partner and giving you the information you need in a clear and concise format.

What can I do to make this more efficient on this project and on future projects which require financial calculations?

Jeff Leonard | Finance Boar's Head Brand

Office: 614-662-5300 x8197

From: Habermehl, Scott

Sent: Monday, June 20, 2016 3:05 PM

To: Leonard, Jeff Subject: FW: Vacation

Jeff,

Can you please send me the detail/backup info used to calculate this?

Thank you, Scott

From: Zarbaugh, Sherry

Sent: Monday, June 20, 2016 2:53 PM

To: Habermehl, Scott Subject: RE: Vacation

It includes everyone on the payroll as of today®

Sherry Zarbaugh | Human Resource Manager Boar's Head Brand 614-662-5300 ext 8104 Thank you, Scott

From: Zarbaugh, Sherry

Sent: Monday, June 20, 2016 2:40 PM

To: Habermehl, Scott Subject: Vacation

The \$104K below is an estimate for July 1st through December 31st, 2016. For a full year, assuming nothing changes in turnover rates, total cost would be ~\$208K based on these very, very rough estimates.

Based on anecdotal feedback, I believe that a vacation policy would reduce the turnover rate. Even if it were For example:

14% of the hourly terminations YTD were due to attendance

Had those employees been charged vacation time rather than being charged with a call-off, they would not have been terminated at that point in time.

Turnover costs are very expensive on the business in terms of the cost to cover the open position (Overtime), the cost to recruit the open position (job boards, advertising, etc.), and the cost to train the new employees (we literally created a job on every shift in every department with the sole responsibility of training new employees due to turnover). One study I read stated estimated cost could be up to 30% of the employees annual pay (\$7-\$8K per \$12.60/hr employee we

Sherry Zarbaugh | Human Resource Manager **Boar's Head Brand** 614-662-5300 ext 8104

From: Drone, Gillette

Sent: Wednesday, June 28, 2017 7:23 AM

To: Habermehl, Scott < Scott. Habermehl@boarshead.com > Subject: FW: Extra Vacation Day for 20 year Employees.

"reminder" This question came up again in our round table meetings.

From: Drone, Gillette

Sent: Wednesday, June 28, 2017 7:26 AM

To: Habermehl, Scott < Scott. Habermehl@boarshead.com >

Cc: Bothum, Tim < Tim.Bothum@boarshead.com > Subject: RE: Extra Vacation Day for 20 year Employees.

Thanks.

From: Habermehl, Scott

Sent: Wednesday, June 28, 2017 7:25 AM

To: Drone, Gillette < Gillette.Drone@boarshead.com > Subject: Re: Extra Vacation Day for 20 year Employees.

Yes, it's partbof the bigger picture vacation upgrade for all hourly ee's. Hopefully it will be resolved soon.

Sent from my Verizon, Samsung Galaxy smartphone





From: Leonard, Jeff

Sent: Wednesday, June 29, 2016 2:47 PM

To: Habermehl, Scott < Scott. Habermehl@boarshead.com>

Subject: RE: Vacation.xlsx

I talked to Rod Poll and Chase Wilkey (Cost accountants in MI and AR) - they are going to be able to help out at their local facilities. They understand the math I used and how it will be different in their locations based on the tenure

They both know to contact me with any concerns or questions.

Jeff Leonard | Finance **Boar's Head Brand**

Office: 614-662-5300 x8197

From: Habermehl, Scott

Sent: Wednesday, June 29, 2016 1:49 PM

To: Leonard, Jeff

Subject: FW: Vacation.xlsx

Jeff,

Can you please send me the spreadsheet with the formulas? We're doing the same calculation for the other non-union

Thank you! Scott

From: Leonard, Jeff

Sent: Tuesday, June 07, 2016 8:33 AM

To: Zarbaugh, Sherry Subject: RE: Vacation.xlsx

Sherry,

I talked to Rod Poll and Chase Wilkey (Cost accountants in MI and AR) – they are going to be able to help out at their local facilities. They understand the math I used and how it will be different in their locations based on the tenure differences.

They both know to contact me with any concerns or questions.

Jeff Leonard | Finance Boar's Head Brand

Office: 614-662-5300 x8197

From: Habermehl, Scott

Sent: Wednesday, June 29, 2016 1:49 PM

To: Leonard, Jeff

Subject: FW: Vacation.xlsx

Jeff.

Can you please send me the spreadsheet with the formulas? We're doing the same calculation for the other non-union plants.

Thank you! Scott

From: Zarbaugh, Sherry

Sent: Thursday, June 02, 2016 3:42 PM

To: Habermehl, Scott Subject: FW: Vacation.xlsx

Importance: High

Hi Scott:

Below is the cost estimate that Jeff and I worked on today for the hourly vacation, as you can see we have two scenario's, one is just giving the new hires the 5 days of vacation within the first year and scenario two is adding a week for all the employees to make it fair. Let me know if you need any additional information.

Thank you,

Sherry Zarbaugh | Human Resource Manager Boar's Head Brand 614-662-5300 ext 8104

From: Helfant, Larry

Sent: Tuesday, June 28, 2016 9:34 PM

To: Habermehl, Scott < Scott. Habermehl@boarshead.com >

Subject: RE: Vacation

Good evening Scott

Can you get the costs for all the remaining plants for PTO in first year just in case we will need to change all the facilities? Once this is done lets meet with Bob for his approval.

Thanks

Larry Helfant Boar's Head Brand Work: 941-955-0994 Mobile: 941-232-9237

Williams, Windy

From:

Williams, Windy

Sent:

Tuesday, September 19, 2017 4:40 PM

To: Cc:

Arkansas Supervisors; Arkansas Manager's

Subject:

Bailey, Janice; Brooks, Loretta; Drone, Gillette; Kennedy, Amber; McCorkle, Brenda; Scott, Revised Vacation Days for 100 Series EE's

Importance:

High

Good afternoon,

Per the meetings this week, please see the table below with the revised vacation days for 100 Series employees. Etime should be updated no later than October 1, 2017 to reflect the updated vacation days for each 100 series full time regular employee.

| Months/Years of Service | Wassell |
|---------------------------------|----------------------|
| 6 months but less than 1 year | Vacation Days Earned |
| 1 year but less than I year | 5 vacation days |
| 1 year but less than 3 years | 7 vacation days |
| 3 years but less than 6 years | 10 vacation days |
| 6 years but less than 10 years | 12 vacation days |
| 10 years but less than 15 years | 12 vacation days |
| 15 years but less than 20 years | 15 vacation days |
| 20 years and at | 17 vacation days |
| 20 years and above | 20 vacation days |

If you have any questions, please let HR know.

Thanks,

Windy Williams | HR Technician Boar's Head Brand (870) 630-1638 Ext. 4114

Proposed

| | Vacation Days | S | Red=Local | Red=Local Market average | age | #=No | #=No data provided | p | | |
|------------|---|-------------|------------|--------------------------|----------|------|--------------------|------------|---------|------------|
| | Forrest City | City | Но | Holland | Columbus | Sr | Nev | New Castle | Jarratt | Peterchira |
| < 1 year* | 5 | 0 | 5 | 3.5 | 2 | ∞ | 5 | 7.5 | C | Since in |
| 1<3 | 7 | 6.67 | 7 | 9 | 7 | 13 | 7 | 10 | | 0 10 |
| 3 < 6 | 10 | 10 | 10 | 10 | 10 | 14 | 10 | 14 | 10 | 2 6 |
| 6 < 10 | 12 | 13 | 12 | 17 | 12 | 17 | 12 | 14 | 10 | 2 5 |
| 10<15 | 15 | 15 | 15 | 18 | 15 | 20 | 15 | 19 | 7, | 15 |
| 15<20 | 17 | 18 | 17 | 19 | 17 | # | 17 | 21 | 5 | 15 |
| 20 < 25 | 17 | 19 | 17 | 22 | 17 | # | 17 | 25 | 17 | 17 |
| 25+ | 20 | 20 | 20 | 23 | 20 | # | 20 | 25 | 20 | 20 |
| *accrued c | *accrued during the year, not all given at once | not all giv | en at once | | | | | | | 21 |

| | Holidays | | | | | | |
|------|--------------|---------|----------|------------|---------|------------|---|
| | Forrest City | Holland | Columbus | New Castle | larratt | Dotorching | _ |
| | 1 | 1 | | | Sallatt | receisparg | _ |
| year | , | / | 7 | 7 | 7 | 7 | |
| , | | , | | | , | , | |
| 2 | 8 | ∞ | ∞ | 80 | *** | *0 | |
| 0 | c | | | | 0 | | |
| 0 | 8 | × | ∞ | ∞ | *** | *0 | |
| | | | | | • | - | |

New York

11.25

*additional day agreed to eff 11/1/16

Current

| Forrest City | Holland | Columbus | Holland Columbus New Castle Jarratt | Jarratt | Petersburg |
|--------------|---------|----------|-------------------------------------|---------|------------|
| 0 | 0 | 0 | 0 | 0 | 0 |
| 5 | 5 | 5 | 5 | 5 | 5 |
| 10 | 10 | 10 | 10 | 10 | 10 |
| 15 | 15 | 15 | 15 | 15 | 15 |
| | | | | 17 | 17 |
| | | | | 20 | 20 |

| New York | 0 | 5 | 10 | 15 | 20 | + \$600 |
|----------|----------|-------------|-------------|--------------|---------------|---------|
| Ž | < 1 year | 1 < 2 years | 2 < 8 years | 8 < 15 years | 15 < 20 years | 25+ 20 |
| | | | | | | |

Holidays

| . year 7 | 7 | 7 | 7 | 7 | 7 | 7 | |
|----------|---|---|---|----|----|-------|------------------|
| 8 | 8 | ∞ | 8 | *6 | *6 | 7 8 | 8 offer 75 mos |
| 0 | | 9 | | | + | 21. | o altel 23 11103 |
| 0 | × | x | ∞ | *6 | * | 11.25 | after 37 month |

*additional day agreed to eff 11/1/16

| New York | 0 | 5 | 10 | 10 | 15 | 15 | 20 | 20 + \$600 |
|----------|----------|-------------|----|-------------|--------------|----|---------------|------------|
| | < 1 year | 1 < 2 years | | 2 < 8 years | 8 < 15 years | | 15 < 20 years | 25+ |

8 after 25 mos after 37 months

EXHIBIT 6

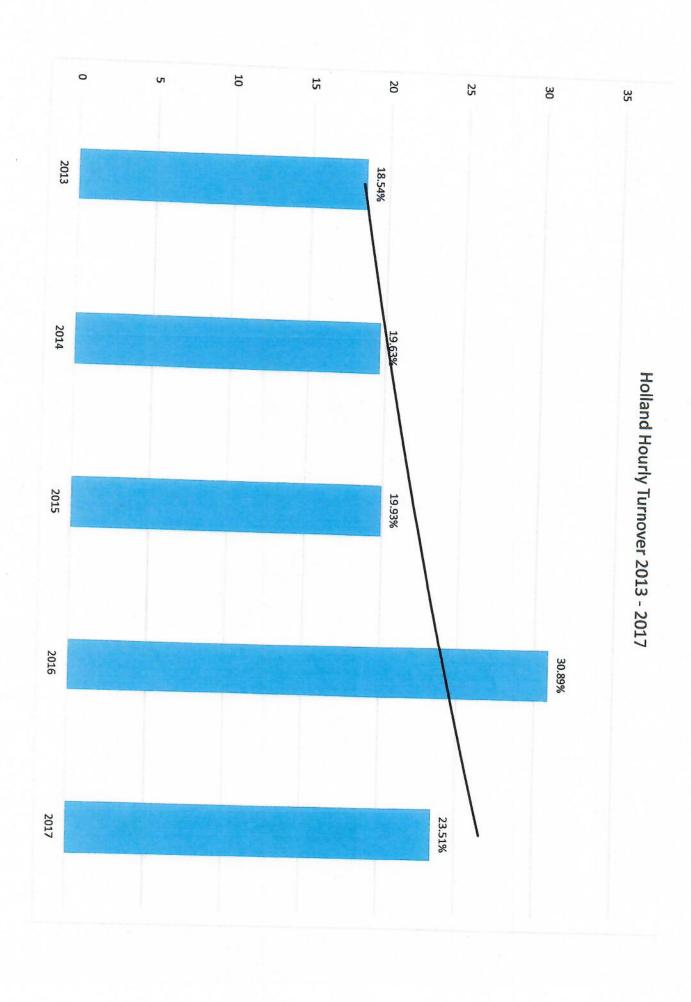
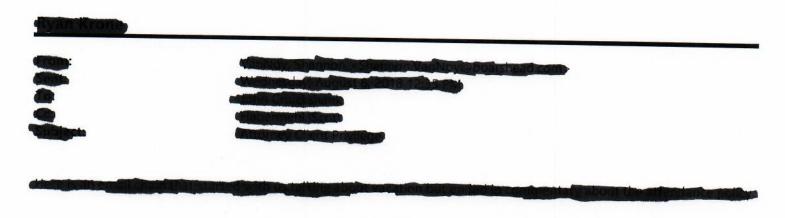


EXHIBIT 7



From: VanNoy, Shannon

Sent: Friday, February 10, 2017 2:28 PM

To: Habermehl, Scott <Scott.Habermehl@boarshead.com>

Subject: RE: 1st year hourly vacation

I personally think the attendance policy is lenient. I don't know that I would tighten it up any at this point though.

What I hear most frequently (in Town Hall) is that they would like to drop ½ point after 30 days instead of 1 point after 60 but other than that, we don't hear much about it.

Shannon

From: Habermehl, Scott

Sent: Friday, February 10, 2017 1:50 PM

To: VanNoy, Shannon < Shannon. VanNoy@boarshead.com>

Subject: RE: 1st year hourly vacation

Do you think the attendance policy is lenient, strict or just right?

Thank you, Scott

From: VanNoy, Shannon

Sent: Friday, February 10, 2017 10:00 AM

To: Habermehl, Scott

Subject: RE: 1st year hourly vacation

I don't believe that it has been vocalized by candidates but it's for sure an issue for sure once they are in. We've heard people say they didn't realize or they thought it would be okay and then life happened and they need time off. We hear occasionally that people are leaving for better benefits and specifically when they go to one of the manufacturers around here they tell us that they are getting vacation as soon as they start there.

More apparent than people telling us this is why they are leaving are the individuals who fall out in their first year of employment under the attendance policy. I think they are using the points as their time off.

Shannon

From: Habermehl, Scott

Sent: Friday, February 10, 2017 9:07 AM

To: VanNoy, Shannon < Shannon. VanNoy@boarshead.com >

Subject: 1st year hourly vacation

Hi Shannon, I'm finally meeting with today to discuss hourly first year (lack of) vacation. How big of an issue is that with recruiting and retention in Holland? Any idea of how many people may have not accepted a job or left because of our current policy?

Thanks!!

Scott Habermehl | Director of Human Resources Boar's Head Brand

Office: 941.955.0994 ext. 2190

Cell: 941.504.1169

This message is intended exclusively for the addressee(s) and may contain information that is business confidential, proprietary and/or trade secret or otherwise legally exempt from disclosure. If you are not one of the named addressees, you are not authorized to read, print, retain, or copy this message. If you have received this message in error, please delete all copies and notify the sender immediately by return e-mail.

EXHIBIT 8

On Aug 17, 2017, at 10:42 AM, Habermehl, Scott < Scott. Habermehl@boarshead.com > wrote:

[Company President],

We are proposing adding a total of 5 paid days off during the first year of employment for hourly employees.

They will be accrued 1 day at a time after each 60 day increment of time employed.

The cost for doing this in non-union plants is estimated at \$290k per year, based on current hiring rates and turnover.

The cost for doing this with the VA union plants included is approx. \$410k.

We are also proposing giving some additional days as follows:

- 2 additional days after 1 year until the 3rd year.
- 2 additional days on the 6th year until the 10th year.
- 2 additional days on the 15th year until the 25th year.
- 5 additional days on 25+ years.

The cost for these additional days is approximately \$156k for the non-union plants.

The cost for the additional days with VA included is approximately \$242k.

Total cost of doing both is approx. \$445k/yr for non-union and \$652k/yr for non-union plus VA.

Thank you, Scott

EXHIBIT 9

UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD

REGION 15 600 South Maestri Place – 7th Floor New Orleans, LA 70130-3413

Agency Website: www.nlrb.gov Telephone: (504)589-6362 Fax: (504)589-4069

August 31, 2018

Alvin Dees P.O. Box 2204 Forrest City, AR 72336

Re:

Boar's Head Provisions Co., Inc.

Case 15-CA-212765

Dear Mr. Dees:

We have carefully investigated and considered your charge that Boar's Head Provisions Co., Inc. has violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have decided to dismiss the following allegations:

• In or around the last week of August 2017, and continuing, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by posting a flyer disparaging the union and making threats of unspecified reprisal and loss of access to management in order to discourage employees from supporting the union and/or becoming union members.

Section 8 (c) of the National Labor Relations Act states the expression of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of the Act, if such expressions contain no threats of reprisal or forces or promise of benefits. Although Section 8(c) makes specific reference to whether speech can constitute or be evidence of an "unfair labor practice," the section articulates standards that have been construed as applying to employer speech more generally. See, e.g., NLRB v. Gissel Packing Co., 395 U.S. 575, 617 (1969) ("[A]n employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the National Labor Relations Board"); United Rentals, Inc., 349 NLRB 190, 191 (2007) ("[T]ruthful statements that identify for employees the changes unionization will bring inform employee free choice which is protected by Section 7 and the statements themselves are protected by Section 8(c).").

In the instant case, the statements contained in the flier do not rise to the level of unlawful statements, but rather, amount to routine campaign propaganda which is protected by Section 8(c). Accordingly, dismissal is appropriate.

In or around the last week of August 2017, the above-named Employer, by its
officers, agents, and supervisors, interfered with, restrained, and coerced its
employees in the exercise of rights protected by Section 7 of the Act by creating the
impression of surveillance when, during a mandatory meeting, it told employees
they knew that the Union was in town.

While you allege the Employer violated the Act by creating the impression of surveillance when it informed employees the Union was in town during a mandatory employee meeting that took place in August 2017, the evidence is insufficient to establish a violation of the Act. At the time the alleged statement was made, the evidence obtained in the investigation established the Union's presence was very public including passing out union literature outside the Employer's facility.

It is not a violation of the Act for an employer to merely observe open union activity, <u>Hoschton Garment Co., 279 NLRB 565, 567 (1986)</u>; <u>Fred'k Wallace & Son, 331 NLRB 914 (2000)</u>. If an employee openly engages in union activity in a readily observable location, a statement that reveals the employer's knowledge of that activity does not create an impression of surveillance. It merely creates the impression that the employer has observed open union activity, which is perfectly lawful. See <u>Sunshine Piping</u>, <u>Inc.</u>, 350 NLRB 1186, 1186-1187 (2007); <u>Michigan Roads Maintenance Co.</u>, 344 NLRB 617, 617 fn. 4 (2005).

Inasmuch as the Employer appears to have observed open union activity, and made a statement which revealed their knowledge of that activity, its actions do not amount to an unlawful impression of surveillance. Accordingly, dismissal is appropriate.

- In or around the last week of August 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act when, during a mandatory meeting, it promised employees additional benefits of two extra vacation days and a change to the employee point system in order to discourage employees from supporting the union and/or becoming union members.
- In or around the last week of August 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act when it gave employees additional benefits of two extra vacation days and changed the employee point system in order to discourage employees from supporting the union and/or becoming union members.

While you contend the Employer violated the Act by promising employees, and later granting employees, additional benefits, the evidence was insufficient to substantiate this allegation. During the course of the investigation, it was established that the changes to the vacation policy and points system had been planned prior to the most recent organizing campaign. In addition, these changes were not made only at the Employer's Forrest City, Arkansas facility; but rather, the changes in benefits were a companywide initiative. See *Nalco Chemical Co.*, 163 NLRB 58, 70-71 (1967) (finding improvements to vacation and holiday benefits did not violate Sec. 8(a)(1) in part because improvements applied corporate wide). Inasmuch as the evidence indicated these changes were already planned prior to the current organizing campaign, it cannot be shown that they were a result of the campaign and dismissal is appropriate.

• In or around the last week of August 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act when, during a mandatory meeting, it made disparaging statements about the Union to employees in order to discourage employees from supporting the union and/or becoming union members.

You contend that during a mandatory meeting in August, the Employer made disparaging statements regarding the Union in order to discourage employees from supporting the union and/or becoming union members. In examining the statements you allege amounted to disparity, the Region found the statements did not violate the Act, but instead, were allowed pursuant to Section 8(c). See, e.g., NLRB v. Gissel Packing Co., 395 U.S. 575, 617 (1969) ("[A]n employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the National Labor Relations Board"); United Rentals, Inc., 349 NLRB 190, 191 (2007) ("[T]ruthful statements that identify for employees the changes unionization will bring inform employee free choice which is protected by Section 7 and the statements themselves are protected by Section 8(c)."). Accordingly, dismissal is appropriate.

- On about October 24, 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by denying employees, including Alvin Dees, a raise in retaliation for their union and/or protected concerted activity.
- On or around October 24, 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by granting a raise to employees in order to discourage employees from supporting the union and/or becoming union members.
- On or around October 24, 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by excluding employees from a company meeting in retaliation for their union and/or protected concerted activities.

In order to establish the Employer has violated the Act as alleged, it must be shown that you engaged in activities protected by the Act, that the Employer knew of those activities and harbored animus against you because of those activities, and that you suffered some harm as a result of that animus. Furthermore, the Employer can present a legitimate defense if it demonstrates that it would have taken the action against you whether or not you engaged in the protected activities. See *Wright Line*, 251 NLRB 1083 (1980).

The investigation disclosed that the Company held a meeting in October 2017, with employees who were scheduled to receive raises. Since your position was not selected to receive a raise, you were not required to attend the meeting. While the Employer did not grant you a raise, the evidence was insufficient to establish the Employer's failure to grant you and other similarly situated employees a raise violated the Act. Specifically, raises were granted to particular groups of employees on a company-wide basis, and other similarly situated employees, at other locations, also did not receive raises. Therefore, the evidence was insufficient to overcome the Employer's Wright Line defense and, therefore, the allegation is dismissed.

 On or around April 9, 2018, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained and coerced its employees in the exercise of rights protected by Section 7 of the Act by suspending employee Alvin Dees in retaliation for his protected concerted activities, union activity, and Board activity.

On April 9, 2018, you admit that you and a co-worker engaged in a verbal confrontation on the workroom floor. As a result of this altercation, both of you were suspended pending an investigation of the incident. The investigation disclosed evidence which established that the Employer did not deviate from its normal policies or procedures, but instead, sent both of you home as it had done for other employees who engaged in similar conduct in the past. Therefore, the evidence was insufficient to overcome the Employer's Wright Line defense that it suspended you for violating its policy concerning such confrontations. Accordingly, dismissal is appropriate.

• For the past six months and continuing, the above-named Employer has maintained an unlawful solicitation/distribution rule.

The Employer maintains a solicitation/distribution rule which allows for exceptions to be made for Company supported charitable efforts such as the United Way and the collection of money for presents, flowers, parties, donations, or for causes of particular hardship. It was determined that such a rule does not violate the Act. While the Board has found violations where no solicitation/distribution rules contained broad and sweeping bans against solicitation for groups or organizations which are not sanctioned by management (See *UMPC* 362 NLRB No. 191, (2015)), the Board has also held no solicitation/distribution rules will not be found to be unlawful merely because it allows charitable solicitations as an exception to the general rule. See *Hammary Manufacturing Corp.*, 265 NLRB 57, (1982) (Board ruled that the Employer's nosolicitation rule was not unlawful because it contained a "sole exception" for the annual United Way campaign) and *Flagstaff Medical Center*, 357 NLRB 659 (2011) (Board upheld the dismissal of an allegation where an employee had been prohibited from engaging in union

solicitation in the kitchen even though the employee had previously been permitted to solicit for the United Way where the judge ruled that "the employer may permit such charitable solicitations on an ad hoc basis without negating an otherwise legitimate exclusionary rule."). Accordingly, dismissal is appropriate.

The following allegations have been retained for further processing:

- In or around September 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by interrogating employees about their Union activities.
- In or around September 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by creating the impression of surveillance of employees' union activities.
- In or around September 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained and coerced its employee's in the exercise of rights protected by Section 7 of the Act by threatening employees with discipline for talking to other employees about the Union and forcing them to fill out Union cards.
- On or around October 10, 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by interrogating employees about their Union activities.
- On or around October 10, 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by threatening employees with termination in retaliation for their union activity and in order to discourage union end/or protected concerted activity.
- On or around April 23, 2018, the above-named Employer, by its officer, agents, and supervisors, interfered with, restrained and coerced its employees in the exercise of rights protected by Section 7 of the Act by terminating employee Alvin Dees in retaliation for his protected concerted activities, union activity, and Board activity.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on September 14, 2018. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed no later than 11:59 p.m. Eastern Time on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than September 13, 2018. If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is received on or before September 14, 2018. The request may be filed electronically through the *E-File Documents* link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after September 14, 2018, even if it is postmarked or given to the delivery service before the due date. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at

a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

M Kathleen McKinney

M. Kathleen McKinney Regional Director

MKM/pal

Enclosure

cc: Brett Holubeck, Attorney Cruickshank and Alaniz, LLP 20333 State Hwy 249 Suite 272 Houston, TX 77070

> Richard D. Alaniz, Attorney Cruickshank and Alaniz, LLP 20333 State Hwy 249 Suite 272 Houston, TX 77070

> John E. Cruickshank, Esq. Cruickshank and Alaniz, LLP 20333 State Hwy 249 Suite 272 Houston, TX 77070

Jillette Drome Human Resource Manager Boar's Head Provisions Co., Inc. 2530 W Broadway Street Forrest City, AR 72335-4403